

Panaji, 16th November, 1989 (Kartika 25, 1911)

SERIES II No. 33

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

### GOVERNMENT OF GOA

#### General Administration and Coordination Department

##### Notification

No. 2-1-88-GA&amp;C

In exercise of the powers conferred under the explanation to Section 25 of the Negotiable Instrument Act, 1881 (Act 26 of 1881) delegated by the Government of India, Ministry of Home Affairs, Notification No. U.11030/2/2/73-UTL dated 28-6-1973, the Government of Goa hereby declares, Wednesday, the 22nd November, 1989 (Agrahayana 1st, 1911) being the "Polling Day" for the General Election to the Lok Sabha and the Legislative Assembly in the State of Goa to be a Public Holiday throughout the State.

By order and in the name of the Governor of Goa.

A. V. Pimenta, Under Secretary (GA).

Panaji, 10th November, 1989.

##### Notification

No. 26-1-88-GA&amp;C

Government is pleased to designate the Chief Engineer (MBP) as Ex-Officio Additional Secretary to the Government. In this capacity he shall sign communications, Orders/Notifications on behalf of the Government.

By order and in the name of the Governor of Goa.

A. V. Pimenta, Under Secretary (GA).

Panaji, 11th October, 1989.

### Department of Personnel

##### Order

No. 5/21/81-PER(Vol. II)

Read:— 1) Order No. 3/17/74-PER(Vol. IV) dated 21-9-1987.

2) Order No. 5/21/81-PER(Vol. II) dated 28-9-1988.

The term of deputation of Shri U. D. Kamat, Grade I Officer of Goa Civil Service, presently on deputation to the Goa Tourism Development Corporation Ltd., is further extended by one year with effect from 22-9-1989 to 21-9-1990.

By order and in the name of the Governor of Goa.

Smt. Prabha Chandran, Under Secretary (Personnel).

Panaji, 6th October, 1989.

##### Order

No. 6/3/81-PER (Vol. IV)

Read: Government order of even number dated 13-9-1989.

In partial modification of para one of Government order, referred to above, Shri A. X. B. Viegas, Chief Officer, Bicholim Municipal Council, is transferred and posted as Assistant Commissioner of Excise, thereby relieving Shri S. V. Bhadri, Assistant Commissioner of Sales Tax, of the additional charge of the said post.

2. Shri M. K. Parida, Sub-Divisional Officer, Panaji, shall hold the charge of the post of General Manager, Goa Marketing and Supply Federation, Panaji, in addition to his own duties with immediate effect thereby relieving Shri D. A. Hawaldar of the said post so as to enable him to report to his new posting as Chief Officer Bicholim Municipal Council as per order read above.

By order and in the name of the Governor of Goa.

A. V. Pimenta, Under Secretary (Personnel).

Panaji, 11th October, 1989.

##### Order

No. 15/5/89-PER

In terms of Rule 48-A(2) of the Central Civil Service Pension Rules, 1972, the Government is pleased to accept the notice of voluntary retirement dated 1-8-1989 given by Shri C. Abdulla in the cadre of Mamlatdar/Joint Mamlatdar/Block Development Officer's and presently working as Estate Officer, Salauli Irrigation Project, Sanguem, with effect from 31-10-89 (A.N.). Consequently Shri C. Abdulla shall stand relieved from the service with effect from 31-10-1989 (AN).

By order and in the name of the Governor of Goa.

A. V. Pimenta, Under Secretary (Personnel).

Panaji, 12th October, 1989.

### Home (General) Department

##### Notification

No. 1/53/88-HD(G)

In exercise of the powers conferred by clause(s) of section 2 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Government of Goa hereby declares the places mentioned in column 2 of the Schedule appended hereto (hereinafter called the said Schedule) to be police stations with jurisdiction over the areas mentioned in the corresponding entry in column 3 of the said Schedule with immediate effect until further orders and further declares that the areas now

(1) brought within the jurisdiction of the Goa Velha and Verna Police Stations shall cease to be within the jurisdiction of the Ribandar and Vasco Police Stations respectively with immediate effect;

- (ii) consequent upon the setting up of the Colva and Maina-Curtorim Police Stations, the existing Margao Rural Police Station, shall cease to exist.

## SCHEDULE

Sr. No.	Name of Police Station	Jurisdiction
1	2	3
1.	Goa Velha	1. Goa Velha 2. Agacaim 3. Batim 4. Siridao 5. Neura 6. Azossim 7. Talaulim (Santana) 8. Curca 9. Dongrim 10. Bambolim 11. Gaucim (Canca) 12. Mandur
2.	Verna	1. Verna 2. Arrosim 3. Cansaulim 4. Nagoa 5. Pale 6. Cuellim 7. Velsao 8. Utorda 9. Cortalim 10. Quelossim 11. Sancoale 12. St. Jacinto
3.	Colva	1. Colva 2. Orlim 3. Carmona 4. Cavelossim 5. Varca 6. Benaulim 7. Vanali 8. Sarnabatim 9. Betalbatim 10. Seraulim 11. Majorda
4.	Maina-Curtorim	1. Chandor 2. Guirdolim 3. Curtorim 4. Macazana 5. St. Jose de Areal 6. Davorlim 7. Raia 8. Rachol 9. Loutolim 10. Camorlim 11. Nuvem 12. Consua 13. Borda 14. Cuelossim 15. Dicarpale 16. Duncolim 17. Carvorim 18. Cusmane 19. Candolim 20. Mulem 21. Calvado

By order and in the name of the Governor of Goa.

A. T. Kamat, Under Secretary (Home).

Panaji, 18th August, 1989.

Revenue Department

Notification

No. 22/124/87-RD

Whereas by Government Notification No. 22/124/87-RD dated 10-10-1988 published on page 524 of Series II, No. 46 of the Official Gazette, dated 16-2-1989 and in two newspapers (1) Gomantak dated 19-10-1988, (2) Navhind Times

dated 7-12-1988 it was notified under section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land, specified in the Schedule appended to the said Notification was likely to be needed for the public purpose viz. Land Acquisition for widening and Improvement of Santana Talaulim road (addl. area).

And Whereas the Government of Goa, (hereinafter referred to as "the Government"), after considering the report made under sub-section (2) of section 5A of the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as "the said land").

Now, Therefore, the Government hereby declares, under section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also appoints, under clause (c) of section 3 of the said Act, the Land Acquisition Officer, P. W. D. (Cell) Altinho, Panaji to perform the functions of Collector, North Goa District, Panaji for all proceedings hereinafter to be taken in respect of the said land and directs him under section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the Office of the said Land Acquisition Officer, P. W. D. (Cell) Altinho, Panaji till the award is made under section 11.

## SCHEDULE

(Description of the said land)

Taluka: Tiswadi

Village: Talaulim Santana

Survey No. Sub. Div. No.	Names of the persons believed to be interested	Area in sq. mts.
1	2	3
12/2 part	Comunidade of Talaulim. T: Deliciosa Monteiro.	32.00
"/1 part	Comunidade of Talaulim.	56.00
"/7 part	Comunidade of Talaulim. T: Sunderem Kuttikar.	26.00
"/8 part	Comunidade of Talaulim. T: Maria Antonio Coutinho.	3.00
"/9 part	Comunidade of Talaulim. T: Mogrem Fernandes.	1.00
"/10 part	Comunidade of Talaulim. T: Govind Fernandes.	3.00
"/11 part	Comunidade of Talaulim. T: Baltazar Menezes.	18.00
"/12 part	Comunidade of Talaulim. T: Veronica D'Mello.	10.00
88/11 part	Comunidade of Talaulim. T: Philip Joao Rodrigues.	29.00
84/3 part	Comunidade of Talaulim. T: Sitaram Gauns.	60.00
"/2 part	Comunidade of Talaulim. T: Molu Vishnu Kankar.	55.00
"/1 part	Comunidade of Talaulim.	30.00
49/2 part	Comunidade of Talaulim. T: Manuel Fernandes.	5.00
"/1 part	Comunidade of Talaulim. T: Ramnath Vernekar.	10.00
15/3 part	Comunidade of Talaulim.	18.00
"/10 part	Comunidade of Talaulim. T: Maria Antonio Saldanha.	7.00
"/9 part	Comunidade of Talaulim. T: Yemu Saldana.	8.00
"/8 part	Comunidade of Talaulim. T: Mogu Soares.	25.00
"/7 part	Comunidade of Talaulim. T: Inas Fernandes.	50.00
"/6 part	Comunidade of Talaulim. T: Bhanumati Voigonkar.	60.00
15/5 part	Comunidade of Talaulim. T: Jose Fernandes.	35.00
85/2 part	Reis Magos Gonsalves. Cristalina Rodrigues e Vincent.	4.00
14/1 part	T: Salvador Saldanha. Reis Magos Gonsalves.	50.00
13/21 part	T: Savlo Saldanha. Comunidade of Talaulim.	55.00
87/1 part	T: Ayeda Narvenkar. Antonio Soares.	40.00
	T: Vishwanath Nagvenkar.	

1	2	3
"2 part	Paixao Rodrigues. T: Joao Kurta Fernandes.	53.00
"5 part	Paixao Rodrigues.	10.00
"6 part	Comunidade of Talaulim.	2.00
41/13 part	Comunidade of Talaulim. T: Mukund Satu Gaude. Atmaram Ramnath Faterpenkar. Bagvan Ramnath Faterpenkar.	40.00
51/6 part	Jose Maria Silveira. Vincent Silveira.	5.00
"7 part	Heirs of Francisco Constancio de Ataide. T: Sitaram Gauns.	140.00
110/8 part	Comunidade of Talaulim. T: Yemu Andra Saldanha.	6.00
"9 part	Comunidade of Talaulim.	140.00
"11 part	Comunidade of Talaulim. T: Jose Manuel Saldanha.	8.00
"12 part	Comunidade of Talaulim. T: Mariano Mahadev Kankonkar.	13.00
82/1 part	Paixao Rodrigues.	32.00
84/8 part	Comunidade of Talaulim. T: Custa B. Gauns.	25.00
"4 part	Comunidade of Talaulim. T: Remedio Cruz.	7.00
38/18 part	Maria Antonio Coutinho.	8.00
"19 part	Nagush Vernekar.	9.00
"20 part	Domingo Cardos. Half Share claimed by: Namdev Bhicu Gauns.	12.00
38/21 part	Maria Antonio Coutinho.	17.00
"25 part	Sitaram Tanu Gauns. Dhaktu Tanu Gauns. Shantaram Tanu Gauns. Ananda Bimbo Gauns. Vishnu Betu Gauns.	20.00
"29 part	Sitara Janu Gauns.	15.00
58/1 part	Heirs of Francisco Constancio de Ataide. T: Saraswati Pereira.	108.00
59/2 part	Piedade D'Mello.	55.00
115/2 part	Betalbai Jivottam Shirodkar. T: Gopal Saldanha. Esmu Saldanha.	74.00
"3 part	Betalbai Jivottam Shirodkar. T: Balaram Saldanha.	102.00
"4 part	Betalbai Jivottam Shirodkar. T: Gopal Saldanha.	98.00
"5 part	Betalbai Jivottam Shirodkar. T: Sitaram Saldanha.	35.00
"6 part	Betalbai Jivottam Shirodkar. T: Sitaram Saldanha. Biju Tanu Gauns.	135.00
"12 part	Comunidade of Talaulim.	22.00
Total .....		1381.00

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Revenue).

Panaji, 12th September, 1989.

Notification

No. 22/138/89-RD

Whereas it appears to the Government of Goa (hereinafter referred to as "the Government") that the land specified in the Schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. Land Acquisition for construction of 8.00 mts. double span culvert including its approaches at Chandor Cotta.

Now, Therefore, the Government hereby notifies, under sub-section (1) of section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as the "said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contract for the disposal of the

said land by sale, lease, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed under paragraph 4 below, after the date of the publication of this Notification, will, under clause (seventh) of section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under section 6 of the said Act will be published in the Official Gazette and in two daily newspapers and public notice thereof shall be given in due course. If the acquisition is abandoned wholly or in part, the fact will also be notified in the same manner.

4. The Government further appoints, under clause (c) of section 3 of the said Act, the Deputy Collector (Revenue) Collectorate of South Goa, Margao to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government also authorise, under sub-section (2) of section 4 of the said Act, the following officers to do the acts, specified therein in respect of the said land.

1. The Collector, South Goa District, Margao.

2. The Deputy Collector (Revenue) Collectorate of South Goa, Margao.

3. The Executive Engineer, W. D. VI (R & B), P. W. D., Fatorda, Margao.

4. The Director of Land Survey, Panaji.

6. A rough plan of the said land is available for inspection in the office of the Deputy Collector (Revenue) Collectorate of South Goa, Margao for a period of 30 days from the date of publication of this Notification in Official Gazette.

#### SCHEDULE

(Description of the said land)

Taluka: Salcete

Village: Chandor

Survey No. Sub. Div. No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3
19	1. Sara Barbosa Fernandes. 2. Chico Fernandes. 3. Maria de Jessus Fernandes.	350.00
Boundaries:		
North: Railway Property.		
South: River.		
East: River.		
West: Sara Barbosa.		
18/1	1. Chico Fernandes. 2. Maria de Jessus Fernandes.	125.00
Boundaries:		
North: River.		
South: Maria de J. Fernandes.		
East: Foot path.		
West: Survey No. 18/21.		
17/2	1. Maria de Jesus Fernandes. 2. Sara Barbosa Fernandes.	150.00
Boundaries:		
North: Foot path.		
South: Maria de Jesus Fernandes.		
East: — do —		
West: Foot path.		
Total .....		625.00

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Revenue).

Panaji, 27th October, 1989.

## Department of Labour

Order

No. 28/3/89-ILD

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Avis Marine Services, Vasco, and their workmen represented by the Gomantak Mazdoor Sangh in respect of the matter specified in the Schedule annexed hereto (hereinafter referred to as the 'said dispute');

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the 'said Act'), the Governor of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa, Daman and Diu at Panaji-Goa, constituted under section 7-A of the said Act.

## SCHEDULE

"Whether the action of the management of M/s. Avis Marine Services, Vasco, in refusing to concede the following demands enumerated in the Charter of Demands raised by the Union by letter dated 19-3-1988 are justified or not?"

## Demand No. 1:

**Basic Pay:** It is demanded that the present day pay scales and grades should be revised on the following lines:

Grades:

I — 450-15-525-20-625-25-375

II — 465-18-555-22-665-28-945

III — 490-20-590-25-715-30-1015

## Demand No. 2:

**Variable Dearness Allowances:** It is demanded that each workman be paid a V.D.A. @ 1.65 per point rise at AAICPI (1960-100) with effect from 1-3-1988. The V. D. A. shall be revised every quarter.

## Demand No. 3:

**Leave:** It is demanded that each workman be eligible for the following leave facilities:

Privileged Leave — 30 days per annum, with the facility to accumulate leave upto 120 days.

Sick Leave — 20 days per annum with the facility to accumulate leave upto 45 days.

Casual Leave — 15 days per annum.

## Demand No. 4:

**Washing Allowances:** It is demanded that each workman be paid washing allowances @ Rs. 20/- per annum with effect from 1-3-1988.

## Demand No. 5:

**House Rent Allowance:** It is demanded that each workman be paid H. R. A. @ 20% of the basic salary with effect from 1-3-1988.

## Demand No. 6:

**Daily Outstation Allowances:** It is demanded that each workman who is deputed on out station duties should be granted Rs. 40/- per day as out station allowances in addition to accommodation and boarding charges.

## Demand No. 7:

**Holidays:** It is demanded that each workman be granted 12 holidays with full wages per annum.

If not, to what relief the workmen are entitled?"

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 5th April, 1989.

Order

No. 28/30/84-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 18th August, 1989.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/48/84

Shri Urbano Mendes

— Applicant/Workman

V/s

M/s. Zuari Agro Chemicals Ltd.,  
Zuarinagar.

— Opponent/Employer

Workman represented by Adv. O. Gomes.

Employer represented by Adv. G. K. Sardesai.

Panaji. Dated, 11-7-1989

## AWARD

This is a reference made by the Govt. of Goa, by its order No. 28/30/84-ILD dated 20th August, 1984, with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s. Zuari Agro Chemicals Limited, Zuarinagar, Sancoale-Goa, in terminating the services of Shri Urbano Mendes, Senior Technician with effect from 9-9-1980 is legal and justified?

If not, to what relief the workman is entitled to?"

After the above Government reference was received in this office and the matter was registered the parties appeared in the matter in response to the notice and the workman Urbano Mendes filed his claim statement on 18-9-84 to which the management of the Party II/Zuari Agro Chemicals Ltd., filed its Written Statement through its Personnel Manager on 5-11-84. Thereafter the workman filed his rejoinder on 19-11-84, and my Predecessor by his order dated 12-10-84 held that no other issues besides the issues involved in the above Government reference were necessary and as such no additional issues were framed by him. The parties thereafter went on trial and a good number of documents were produced on behalf of both the parties. At the trial the workman by his application dated 2-5-85 requested my Predecessor to direct the witness A. Cordeiro of Party II/Employer to produce certain documents listed in the application to which the management objected on the ground that the documents were not necessary for the trial. My Predecessor by his speaking order dated 2-8-85 held that the workman's application dated 2-5-85 did not fulfill the requirements of law and that the application was also not supported with affidavit and the application stood dismissed. Thereafter another order was passed by my Predecessor on 28-2-86. This order was passed in response to the contention of the Party II/Employer that the order of reference made by the Government was bad in law for non application of mind by the Government while making the reference. According to the order of my Predecessor this objection ought to have been raised in the written statement. However, this objection would be considered at the time of passing the award as a preliminary issue after all the evidence in the case is over. It seems that he passed this order in the midst of the evidence which was being recorded before him and directed that the recording of the evidence should continue on 20-3-86 for hearing of the case on merits. Thereafter the matter did not make much progress and the matter was kept on sine die list on 16-6-86 due to the superannuation of my Predecessor Dr. Renato Noronha and the matter came up before me in November, 1987 and further evidence was recorded before me in the case and I shall go on considering the case on merits. Shri Sardesai for the Party No. II/Employer claims before me that the issue

as regards the failure on the part of the Government to apply its mind before making the reference should be treated as a preliminary issue. However, I do not think that it is necessary to do so and the whole matter can be disposed off on merits including the point as regards the failure on the part of the Govt. to apply its mind before making the reference to the Industrial Tribunal u/s 10(1)(d) of the I.D.A. Many points are common in the pleadings of both the parties and as such I shall recapitulate the facts and circumstances giving rise to this government reference.

The Party I, Urbano Mendes joined the service of Party II, Zuari Agro Chemicals Ltd., as a Trainee Technician on 14-2-77 and he was confirmed in service as Sr. Technician in service on 16-8-78. After the formation of the union of the workmen of Zuari Agro Chemicals, hereinafter referred to as ZACL a big multi National concern, went on strike. The tussle between the management of M/s ZACL and the union started in Feb., 1980 after the submission of the charter of demands. The Union had submitted the charter of demands and asked for amenities such as gloves etc., and the Party I, Urbano Mendes claims that he was the first signatory to the demands made by the union. This is the back ground and history which is given to point out that the relations between the union and the management had strained to a particular extent.

So far as the present workman is concerned there is a specific charge levelled against him on 24th April '86 whereunder it was alleged that he stole two mattresses and pillows from the residential quarters of the company for which he was arrested by police on that day and was subsequently bailed out on 19-5-80. After the filing of the prosecution against the workman at the instance of the company and after the release of the workman on bail he went to the company's office on that day with the intention of resuming his duties as he was prevented from doing the duty being in the custody. On 7-5-80 the Company suspended the workman by serving a chargesheet on him and calling upon his reply within 3 days viz. 72 hours. In this charge sheet the charge of theft which amounted to misconduct was levelled against him. While this individual matter against the workman was going on the matter of unrest between the union and the company was heating up and the union declared a strike on 20th May, 1980. Before that on 10th September, 1980 the company had declared a lock-out as the workmen were found to be in an agitated mood and in the general strike about 1400 workmen went on strike and these workmen were locked out.

So far as the enquiry against the present workman is concerned one Nainapally was appointed as the Inquiry Officer to enquiry into the charges of misconduct and this Nainapally fixed the enquiry in the Administrative Building of the company on 9th Sept., 1980 viz. on the earlier day of the declaration of lock-out. On 9th Sept., 1980 the situation was so volatile and the workmen had become violent in such a way that the gates of the company were not opened and the Inquiry Officer could not enter into the Admn. building to hold the enquiry scheduled on 9-9-1980. The workman claims that he went to the building to attend to the enquiry and on finding that the building was closed he went home and on the next day he sent a registered letter to the management saying that he was present before the building on the earlier day viz. 9-9-80, but nobody was there.

Between 9-9-80 and 16-3-81 nothing tangible took place, so far as the enquiry against the workman was concerned. A letter dated 16th March, 1981 was sent by the Vice-President (Tech.) of the Company by name T. Singh (Letter Exb. W-7) wherein it was alleged that the workman was absent at the time of the enquiry on 9-9-80 and so he was presumed to be absent and it was also presumed that he had abandoned the service. The workman sent a reply to this letter on 18-3-81 by Regd. post denying the allegation and informing the management that he was very much interested in rejoining the services and was ready for the enquiry. In the meantime the subsistence allowance which was being given to the workman on account of his suspension was stopped by the company w.e.f. 3rd August, 1980. The workman treated this letter of T. Singh as the letter of termination and raised an industrial dispute. According to him by virtue of this letter there is severance of the relationship of employer and employee brought about by the management by virtue of the letter dated 16-3-81. According to him as a first step towards the severance and termination the management had stopped the subsistence allowance from 3rd Aug., 1980. Hence it is claimed by him that this is a case of termination simpliciter and there is no question of the abandonment of the service as adumbrated on behalf of the management.

As against this specific stand taken by Party I it is claimed by the management that there is no termination as such and as "there is no case of termination" the Government reference is bad in law. According to G. K. Sardesai, Advocate for the management the workman will be entitled to reliefs only if there is a termination and if there is no termination the workman has no case as the Government reference itself is bad in law. For this, he relies on observations of the Goa Bench of the Bombay High Court in the case reported in 1985 Vol. I LLJ page 408. Shri G. K. Sardesai wants this Tribunal to record a finding on this issue about the point as to whether there is really any termination of services and whether the letter of vice-President Shri T. Singh dated 16-3-81 Exb. W-7 should be termed as a letter of termination from service. According to him this is a case of abandonment of services on the part of Party I/Workman and the management would be prevented from taking a plea of abandonment as the Government reference clearly speaks of the services and not abandonment of the job by the workman and as such the issue for consideration is regarding the termination and as there is no termination the Government reference is bad in law. This is the sum and substance of his submissions so far as the preliminary issue is concerned.

While making submissions on the other issues he almost agrees with the dates given by the workman. He admits that the order of suspension and charge sheet were issued to the workman on 7-5-80 and enquiry was fixed on 20-5-80. The enquiry did not take place on that day and the enquiry was again fixed on 9-9-80. In that month the union trouble had started and the workman had indulged in agitation on 9-9-80 and the Administrative building where the enquiry was to be held was closed. According to the management the workman was represented by the Union leader by name Kutty and this Mr. Kutty was spear heading the agitation. The agitation ultimately culminated in the company declaring lock-out on 10-9-80. It is also admitted on behalf of the management that no enquiry could be held on 9-9-80 as the administration building was closed. Thereafter the lock-out was lifted on 14-9-80 and this was declared by displaying a notice on the notice board and also publishing notices in the News Papers asking the workmen to resume duties. While issuing the public notices in the local news papers 26 workmen were omitted because these workmen were either dismissed or enquiries were going on against them. So even after the lock-out was lifted those workmen against whom enquiries were pending were not offered the work and they were not required by the company to resume their duties. Thereafter the impugned letter Exb. W-7 dated 16-3-81 was written by Shri T. Singh and according to the management the workman was informed that he did not attend the work nor had he entered into any communication and acting upon clause 15(6)(e) of the Standing Orders the services were terminated. The management claims that this clause in the Standing Orders enables the company to treat the abandonment of the services by the workman as resignation and to take action against the defaulting workman by terminating his services. Earlier to the lock-out dated 10-9-80 there was one more lock-out on 14th July, 1980. The Government at this time intervened and declared that the lock-out as well as the strike were illegal and there was a settlement and the lock-out was lifted on 2nd August, 1980. As per the clause I of the settlement it was agreed that all enquiries excepting those regarding the charges of theft were withdrawn. Hence inspite of this settlement the enquiry against this workman was pending and thereafter the second lock-out was declared on 10th Sept., 1980 as stated above. As regards the lifting of the second lock-out on 14-9-80 Shri Sardesai for the management claims that in the lifting of the second lock-out only 26 workmen against whom enquiries were pending were not allowed to resume and the 26 workmen were specifically named and the list of 26 workmen did not include the name of the present workman Urbano Mendes and as such it is claimed that after the lifting of the second lock-out the workman could have come to the company to resume his duties.

It appears that the matter is not so straight and clear as that because the criminal case as regards the theft of mattress and pillows dated 24th April, 1980 was pending against this workman and the workman was acquitted of the criminal charge by the Judicial Magistrate on 31st March, 1983 and a copy of the judgment of the Magistrate is produced in the case papers and it is claimed on behalf of the workman that the learned Magistrate during the course of his judgment has observed that the prosecution of the workman was a case of victimisation. So the dates which require specific mention can be enumerated as below in the order of sequence:



1. 24th April, 1980—Workman arrested on charge of theft.
2. 7th May, 1980—Workman released on bail.
3. 7th May, 1980—Workman went to the company to resume duties but a copy of suspension order and charge sheet were served on him on the very day asking for his reply within 72 hours.
4. Agitations of the Union started in September, 1980.

Shri Nainpally was appointed as Inquiry Officer and the enquiry initially fixed on 20-5-80 was adjourned to 9-9-80 the day on which the agitation was in full swing and the Administrative Building where the enquiry was to be held was closed and there was no question of holding the enquiry.

- (a) 10-9-80—lock-out declared (b) 14-9-80 lock-out lifted, (c) the company issued public notice asking the workmen excepting 26 workmen to resume duties. (d) 16-3-81—Notice of termination issued by Shri T. Singh, Vice-President (Technician).

A brief resume of the facts noted above shows that important and crucial date is 9-9-80 the day on which Shri Nainpally was to hold the enquiry in the administrative building but admittedly Shri Nainpally could not hold the enquiry as the building was closed down or so to say the administration was compelled to close down the building due to the agitation and due to the violent atmosphere prevailing in the area and this is clear from the fact that next day viz. on 10-9-80 the company declared a lock-out. The workman claims that he came to the administrative building on 9-9-80 but could not enter the same as the main gate was closed and by way of abundant precaution he sent a notice to the management on the next day. These facts go to show that the workman was not responsible for the inability of the Inquiry Officer Shri A. V. Nainpally to hold the enquiry and it was up to Nainpally to fix the next date of enquiry. I have carefully gone through the case papers and I could not come across any paper or documents showing that the enquiry was fixed on any day and that the workman Urbano Mendes did not Co-operate in holding the enquiry. Even the letter of T. Singh which is incidentally treated as the letter of termination shows that the Vice-President by his letter Exb. W-7 held that the workman was not present at the time of the enquiry on 9-9-80 and so he was presumed to be absent and it was also presumed that he had abandoned the services. In the same letter the Vice-President, T. Singh states that the prolonged absence was treated as resignation w.e.f. 9-9-1980 and a copy of the letter was sent to the Financial Accounts to settle his dues. This letter after a careful reading shows that the management had terminated the services of the workman on the spacious ground that he had abandoned the services by not appearing for the enquiry but as a matter of fact the position is quite clear and quite different as seen from the record.

The lock-out was initially lifted on 2-8-80 after the first lock-out dated 14th July, 1980 was declared by the Government as illegal. Be it noted here pertinently that at the time when the first lock-out was lifted there was a settlement between the company and the union and in the settlement it was agreed that all enquiries excepting those regarding the charges of theft were withdrawn. The workman Urbano Mendes was charged with the charge of theft of mattresses and pillows and as such the enquiry against him was pending. With this background the second lock-out was declared on 10th September, 1980 and the same was lifted on 14-9-80 and this time a public offer was made to the workmen through notices published in the news papers calling upon them to resume duties and this time 26 workmen were excluded. It may be that the name of Urban. Mendes was not included in the list of the 26 workmen but the fact remains unchallenged showing that he was not only suspended but the enquiry was pending against him and Shri Nainpally was to hold the same on 9-9-80 but he could not hold the same for the reasons discussed in the foregoing paragraphs. Hence it is clear from the record that the workman Urbano Mendes was not only under suspension on 9-9-80 but he was under suspension on 14-9-80 and his subsistence allowance was stopped by the management in the month of August. If all these facts are taken in consideration it is to be presumed that the workman was under suspension, there was a charge sheet filed against him, an enquiry was pending against him and he was being paid the subsistence allowance which was also stopped by the company for the reasons best known to them. We get a pointer to this action of the management of the Company in the criminal prosecution of the workman a fact which

has to be taken into consideration while understanding the attitude of the company.

There was a criminal prosecution lodged against the workman on the charge of theft and it was a police case in which the employees of the company were cited as witnesses while the workman Urbano Mendes stood in the dock as a accused person. This case went on till 1983 and it can be presumed that all concerned were waiting for the outcome of the criminal case and the copy of the judgment of the Judicial Magistrate shows that the workman was honourably acquitted of the charge of theft and during the course of judgment the learned Magistrate has observed that this is a case of victimisation of the workman by the management. It can therefore be presumed that all concerned were waiting for the decision in the criminal case which went in favour of the workman but the management without waiting for the decision of the criminal case took an unilateral step by resorting to an overt act by issuing the letter of termination dated 16th March, 1981 under which the absence on 9-9-80 was taken as amounting to resignation or in other words amounting to abandonment of service and consequently the financial accounts department was advised to settle the dues of the workman. The question then is whether this is really a case of termination simpliciter or a case of abandonment of services and whether the workman is to be blamed for the whole situation arising out of the developments. It is pertinently clear that the charge of theft is an important factor to be taken into consideration because the workman is charge-sheeted and an enquiry is initiated against him by appointing Shri Nainpally as the Inquiry Officer on the specific charge of theft of mattresses and pillows and this matter was sub-judice before the Judicial Magistrate. Hence on all counts the Inquiry Officer was supposed to wait till the outcome of the criminal case because it was a criminal prosecution and the stake was not the continuation of service but the state was one's liberty because if the charge of theft was proved against the workman he would have been sentenced to imprisonment and this would have been a more severe punishment than termination from services. Hence the point in the entire episode was the outcome of the criminal prosecution and all concerned were bound to wait for the outcome of the criminal case. It is therefore obvious that the management was also expected to wait for the outcome of the criminal case but the management resorted to a short cut by issuing the letter of termination Exb. W-7 by stating that the workman had indulged in prolonged absence which was termed as his resignation. Evidence on record shows that the workman was repeatedly sending letters to the management most of which were sent by Regd. post informing the management that he was ever ready to rejoin the services and the management had not sent any replies to his letters. Hence the letter of termination Exb. W-7 dated 16-3-81 has to be considered along with the letters sent by the workman to the management together with the order of acquittal passed by the Judicial Magistrate on 31st March, 1983. This then brings me to the consideration of the main arguments of Shri Sardesai on the point that there is abandonment of services on the part of the workman and the point of abandonment of services by the workman is not a matter in the Government reference and as such the Government reference is bad in law and the management had not terminated the services of the workman and the management relies on the Standing Orders clause 15(6)(e) regarding the situation under which a workman is to be deemed to have abandoned the services.

Shri G. K. Sardesai in the last phase of his arguments submitted before me that the question is whether the workman had really abandoned the services and whether abandonment amounts to resignation. According to him the workman had admitted before the Labour Commissioner that he had abandoned the services and as such there is abandonment amounting to resignation and there is no termination as such and still the Govt. has made a reference by saying that there is termination of services. According to him there is no termination of services by the management and as there is no termination of services there is no question for considering whether the so called termination is legal and valid because this pre-supposes that the management had taken an action in terminating the services. According to him in this case there was no termination at all and the contract of service came to an end by virtue of the abandonment of the service by the workman and in this regard the Standing Orders comes into play, and on this point he relies on the reported ruling of the Goa bench of the Bombay High Court in the case of Sitaram Vishnu Shirodkar, reported in 1985, Vol. I, LLJ page 480. Relying on the principles laid down in this case by their Lordship of the Goa Bench Shri Sardesai maintained that if there is a

case of voluntary abandonment the Government reference itself is incompetent and the same will have to be rejected on the ground that the Government has failed to apply its mind to the facts of the case before making the reference to the Industrial Tribunal. Hence before proceeding further in the discussion I shall study what the Goa Bench has to say in the aforesaid ruling and thereafter I shall study the facts of the case to understand whether this is really a case of abandonment of services as adumbrated by the management of Party II or whether this is a case of termination simpliciter and whether the letter of T. Singh dated 16-3-81, a copy of which is at Exb. W-7 should be treated as the letter of termination.

While relying on the case of Sitaram Vishnu Shirodkar Shri G. K. Sardesai made out a strong case that the workman had abandoned the services and abandonment means resignation. Consequently the management of Party II, Z. A. C. L. has justified in sending the letter Exb. W-7 which is not actually a letter of termination but a letter appraising the Party I/Workman of the fact that the workman had voluntarily abandoned the services and consequently the clause 15(6)(e) of Standing Orders was attracted and the services were terminated. This is so because this conduct of Party I allowed the company to treat the abandonment as resignation and when there is a resignation the company is competent to act under the standing orders taking steps as regards termination. Hence according to him this is a case where the action of termination is not initiated by the company but the inaction on the part of the workman viz. abandonment of services prompted the company to take the steps of termination by treating the abandonment as resignation. He therefore relies on the observations of the Goa Bench of the Bombay High Court wherein their lordships of the Goa Bench have held that the Government reference was bad in law and it had to be quashed. The Division Bench had made the following observations in this regard "The Tribunal could not travel beyond the reference and decide the question whether the respondent No. 4 had abandoned his services. That the petitioner had terminated the services of the respondent No. 4 was an act fastened on the petitioner by this reference and the only question left open for decision was whether the termination was legal and proper. In this view of the matter, in our opinion, the reference itself was bad and has to be quashed".

By placing strong reliance on this observation of the bench Shri Sardesai submitted before me that the facts of this case are similar and the Government reference is bad in law as the Government has wrongly pre-supposed that the overt action of termination was initiated by the Company by issuing the order of termination by issuing the letter Exb. W-7. According to him, the letter Exb. W-7 is not the first step initiated by the Company but it is a step taken by the Company after it noticed that the workman had abandoned the services and this amounted to resignation. When once the Company came to a conclusion that there was a resignation the consequences follow and the steps as regards termination were taken by directing the Accounts office to settle the account of the workman. I shall study the facts of Shirodkar's case to see whether the facts in that case are similar to the facts in this case or whether the facts are distinguishable.

In Shirodkar's case where the Government had made a reference the employer was a Restaurant under the name and style of 'Cafe Real' of Panaji, Goa. The workman was in their service since the year 1973. Admittedly, since 1st March, 1978 the workman did not report to duty. A dispute was then raised for the first time, about six months thereafter on 26th September, 1978 by the workman and the conciliation proceedings were held by the Asstt. Labour Commissioner in respect of the alleged dispute. The contention of the workman was that he was removed from the service. Whereas the contention of the employer was that he used to remain absent from duty without any prior intimation and he abandoned the job (permanently) from 1st March, 1978 and never turned up. In the conciliation proceedings, with the given facts the management had maintained that the workman was not interested in the job and he would be paid his gratuity, leave wages if any and other legal dues. Thereafter in the hearing before the Asstt. Labour Commissioner on 15th December, 1978 certain terms of settlement were worked out but the workman to accept those terms the conciliation proceedings having thus ended in failure, the reference in question was made by the Government and the Tribunal passed an award holding that the action of the management in terminating the services of the workman was illegal and unjustified and directed the reinstatement of the workman with full

back wages. While considering this award their lordships of the Goa Bench made the above observations and held that the reference made by the Government of Goa was bad as in their opinion it was a clear case of abandonment of the services by the workman and the management had not acted u/s 39 or Sec. 52 of the Shop Act.

A careful reading of the above facts clearly goes to show that these facts are clearly distinguishable. The workman in that case working in the Restaurant to which the provisions of Shop Act were applicable had abandoned the services by remaining absent for over 6 months from 1st March, 1978 and had never turned up. Hence this was an act of abandonment and the workman was squarely responsible for it and it has rightly been pointed out by the management/respondent that he was not interested in the job. Even then they had offered him the payment of Gratuity, leave wages and other legal dues. This conduct of the management was consistent with their case that the workman had abandoned the services and the subsequent industrial dispute raised by the workman after about 6 months would not go to change the position and when a failure report was made to the Government the Government ought to have considered these facts to find out whether it was a fit case for making a reference. On facts of that case the Goa Bench felt that the Government had failed to apply its mind before making the reference and consequently quashed the reference. As stated above the facts in this case are clearly distinguishable and I have already enumerated the different stages in this case to understand the developments in this case. At the cost of repetition I may state here that the main and important development which took place between the workman viz. a viz. the management was that an allegation was made by the management against the workman alleging that he had committed theft of the two mattresses and pillows for which a criminal complaint was filed with the Vasco police for which the workman was arrested on 24th April, 1980 on the charge of theft. This clearly shows that the step was initiated by the management and after the workman was released on 7th May, 1980 he went to the Company office to resume work when the Company served a suspension order as well as a charge sheet on him asking him to give his reply within 72 hours. Be it noted here that the Union had simultaneously started agitations by submitting the charter of demands. The Union and its members were getting restless while the management as far as this workman is concerned had initiated positive step of appointing Shri Naimpally as the Inquiry Officer who fixed the date of enquiry on 20-5-80. The enquiry was thereafter adjourned and the last date on which Shri Naimpally fixed the enquiry at the Administrative building was 9-9-80. At that time the embers of dispute were simmering amongst the workmen who had become violent on or before 9-9-80 admittedly. Admittedly, the Company was forced to close the office building including Administrative building and even the front gate was closed. Consequently Shri Naimpally was unable to hold the enquiry on 9-9-80 and the workman positively states that he went to the Administrative building but found that building locked and front gate closed and so he went back. The workman who was conscious about the consequences of his absence at the time of enquiry and who found that the Company had declared a lock-out on 10-9-80 took a positive step in sending a Registered letter on the very date viz. 10th Sept., '80 informing the management that he was present for the enquiry but nobody was present including the Inquiry Officer, the Administrative building was closed and as such he should be informed about the further date. Thereafter there was a stalemate and as stated above the lock-out was lifted on 14-9-90 and the notice of lifting of lock-out was displayed on the notice board and published in the news papers asking the workmen to resume duty. The 26 workmen against whom enquiries were pending were excluded. Obviously the workman Urbano Mendes must have been excluded from this offer to rejoin because he was not only suspended from service but an enquiry was going on against him by issuing a charge sheet and his suspension allowance was also stopped. All these are the overt acts done by the management and job is not offered either saying that all charges against him are withdrawn, the suspension order is revoked and he is free to join the services. Obviously this has not been done by the management as in all probability both the workman as well as the management were waiting for the outcome of the criminal proceeding and the criminal case ended in the acquittal of the workman in 1983 as stated above. Hence there is no question of the workman abandoning the services but the facts go to show that he was prevented from rejoining the services as an enquiry was pending against him and he was put under suspension. Unless the order of suspension was revoked and unless and until the workman was informed

by an order in writing that the charge was withdrawn, he was legally or administratively prevented from rejoining the services and therefore there was no question of the workman abandoning the services. The management however did not have the patience to wait till the outcome of the criminal proceedings initiated by it, but in the meantime on March 16, 1981 the letter W-7 was written by the Vice-President (Tech.) Shri T. Singh informing the workman in un-mistakable terms that he failed to remain present for the enquiry on 9-9-80, a fact which is ex-facie wrong. The second wrong statement made in this letter of termination is that the workman did not report before the Inquiry Officer Shri A. V. Naimpally on the day and time appointed for the enquiry. This statement is also wrong. Based on the first two wrong statements the Company's Vice-President has made a third wrong statement that the Company presumed that the workman was no longer interested in continuing with the Company and therefore the Company treated his prolonged absence as his resignation from the Company's services w.e.f. 9-9-80. This is the third wrong statement because admittedly on September 9, 1980 the activities in the Company had come to a stand still and by no stretch of imagination can it be stated that Shri Naimpally could have held the enquiry in the Administrative building on that day in a volatile situation. Hence the letter of termination Exb. W-7 is based on these three wrong statements and the Company has remained under the spacious assumption that this is a case of voluntary abandonment of services. On the contrary the position is quite the contrary in as much as the company overtly suspended the workman, initiated an enquiry by appointing Shri A. V. Naimpally as the Inquiry Officer and there is no record showing that Shri Naimpally held any enquiry after 9-9-89 which was not attended by the workman. Hence considering all these aspects it has to be stated that the workman was no way to blame in all these happenings and the company acted rather abruptly and unilaterally in terminating the services of the workman even without waiting for the outcome of the criminal proceedings filed against the workman by the company and in which the workman was acquitted in a court of law and all these facts cannot be ignored when we are considering the question of abandonment. I find that this is not a case where the Government have failed to apply its mind but on the contrary the Government rightly acted on the failure report of the Labour Commissioner and made a reference to the Tribunal. As a matter of fact the action of the Government in making a reference is not justiciable so far as the tribunal is concerned and at the most the High Court or the Supreme Court may say about the government reference and on this point reliance is placed for the workman on an authority of the Supreme Court reported in AIR 1979 Supreme Court, page 170. Therein the Supreme Court was considering the power of Government to make a reference u/s 10 of the Industrial Disputes Act. Their lordships of the Supreme Court have observed that this power of the Government is discretionary and administrative in character. The Government has to exercise its power whenever an industrial dispute exists or there is an apprehension of the existence of an industrial dispute. When once the Government finds that there is dispute existing, the Government has to take steps u/s 10(1)(d) of the

Act and the adequacy or sufficiency of material forming the Government's opinion would not be a subject matter for consideration before Industrial Tribunal and this power of the appropriate Government is not justiciable.

These are the facts and principles which are laid down in the above case and considering those observations most respectfully I have to say that the Government reference is not only just and proper but the adequacy or other wise of the material forming Government's opinion cannot be considered by this Tribunal after once the reference is received by it. However, in the present case I find that there was sufficient material before the Government before making the reference to the Tribunal because the workman was suspended from service, an enquiry was initiated against him by issuing a charge sheet to him and even before the conclusion of the enquiry the workman's services were terminated and after some months thereafter the workman was acquitted by the competent criminal court. All these facts are sufficient for the Government to enable it to make a reference to the Tribunal and the objection taken by the company for the Government reference is not sustainable. The point of abandonment amounting to resignation was the main point that was agitated before me on behalf of the Party II/Company and otherwise I find that the action of the Company in terminating the services of the workman is not just and legal in the circumstances of the case. Consequently I answer the Government reference accordingly and pass the following order:

#### ORDER

It is hereby held that the action of the management of M/s Zuari Agro Chemicals Limited, Zuarinagar, Sancoale, Goa, in terminating the services of their workman Shri Urbano Mendes, Senior Technician with effect from 9th Sept., 1980 is neither legal nor justified.

It is therefore held that the workman is entitled to reinstatement in service with full back wages and all other legal dues.

In the circumstances of the case, the parties are directed to bear their own costs.

Inform the Government accordingly about the passing of the award.

S. V. Nevagi  
Presiding Officer  
Industrial Tribunal

#### Corrigendum

In the Notification from the Revenue Department No. 22/66/88-RD dated 15-6-89 published in the Official Gazette, Series II No. 12 dated 22-6-89, the Survey No. in the Schedule at page 105, may be read as "98/114/part" instead of "89/114/part".